



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,203	06/15/2001	Leonard R. Bayer	HAR-003	8016

7590 07/16/2003

Kenneth J. LuKacher  
South Winton Court  
3136 Winton Road South, Suite 304  
Rochester, NY 14623

EXAMINER

MCALLISTER, STEVEN B

ART UNIT PAPER NUMBER

3627

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/882,203

Applicant(s)  
Bayer et al

Examiner  
Steven McAllister

Art Unit  
3627



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Apr 28, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-39 is/are pending in the application.
- 4a) Of the above, claim(s) 1-15, 17-24, and 30-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

Art Unit: 2167

## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election with traverse of Group V, claims 25-29 in Paper No. 10 is acknowledged. The traversal is on the ground(s) that the groups are merely of different scope. This is not found persuasive because as discussed in the restriction requirement, they fulfill the requirements of a subcombination/combination relation wherein the combination does not require the specifics of the subcombination for patentability and the subcombination has separate utility. For instance, to amplify the restriction the subcombination can be used for product research and the combination can be used for product ordering. Furthermore the subcombination can be used without any sending of software from a server to the user computer. The product configuration process can be standalone until the end, at which time information is uploaded to a server. Nor requirement of downloading software via the network is required.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 2167

- having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. Claims 25, 26, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henson (6,167,383).

Henson shows sending software from a network addressable site to user computers, the software comprising an user selectable form which when executed by the user computers selects the features of a product; displaying a total price in accordance with selected features; updating the total price when different features are selected; and returning information via the network to the server showing selections made. Henson does not show updating the price independently of the server. However, it is notoriously old and well known in the art to do so. For instance, it is notoriously old and well known in the art to send Java programs to the user computer to accomplish such tasks independent of the server. It would have been obvious to one of ordinary skill in the art to modify the method of Henson by doing so in order to lesson the volume of interactions with the server.

As to claim 26, it is noted that Henson shows features having subfeatures for selection and that the price varies according to these subfeatures.

As to claim 28, it is noted that no method step is claimed. Rather, only the type of information sent is specified. Additionally, it is noted that it is notoriously old and well known in the art to record the interim steps taken in a computer process. It would have been obvious to one of ordinary skill in the art to further modify the method of Henson by recording and sending

Art Unit: 2167

the actions taken by the user including features selected and changes made in order to determine and improve system usability.

As to claim 29, it is noted that the recited element is directed toward the intended use of the information only and is not viewed as a limitation on the method.

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henson in view of the well known prior art as applied to claim 25 above, and further in view of Ghahramani (5,808,908).

Henson in view of the well known prior art shows all elements of the claim except measuring the elapsed time to complete the task. Ghahramani shows determining the elapsed time. It would have been obvious to one of ordinary skill in the art to further modify the method of Henson by determining the elapsed time as taught by Ghahramani in order to help measure and improve usability of the system.

#### ***Response to Arguments***

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

However, some arguments are herein noted to expedite prosecution.

Art Unit: 2167

Regarding the argument that the claims are allowable because the method is not associated with any transaction, as claimed (cl. 29), the limitation appears to have no association with the method. Rather it appears to be a restriction on use at a time in the future.

Regarding the argument that the price is not updated until the "Updated Price" button is clicked, as read by the examiner no limitation exists that requires the price to update automatically upon the selection being changed.

Regarding the argument that the combination with Ghahramani is not proper because the present system is for obtaining market data not usability information, the examiner believes that this is simply a difference in motivations and that is still proper to modify the method of Henson to include the steps of Ghahramani in order to improve usability.

### *Conclusion*

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 2167

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052.

  
Steven B. McAllister

July 12, 2003